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Richard A Ryan Attorney at Law
8497 N Millbrook Avenue Suite # 110
Fresno, CA 93720

EXAMINER

GELLNER, JEFFREY L

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,967

Applicant(s)

SACKS, RAEL

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18, 21, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 6, 8, 9, 12, and 17 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628).

As to Claim 1, Lemelson discloses a landscape edging system (Figs. 1-5) comprising an edging strip (11 of Figs. 1 and 5) having top and bottom surfaces (surfaces of 15 and 17 of Fig. 1) and first and second ends, edging strip having a core (12, 15, and 17 of Fig. 1), the core layer having two longitudinal channels (15B and 17B of Fig. 1) disposed therein, each of the channels having a channel wall (shown in Fig. 1); and a connector (20 of Figs. 1 and 4) having a channel shaped sleeve portion (25, 26, 22, 27, 28 of Fig. 1; sleeve portion is channel shaped in that fits into channels 15B and 17B) with an internal body member (22 of Figs. 1 and 4) with open first and second ends (in that ends around 28B and 26A of Fig. 1 are open) configured to receive the ends of the edging strip (in that they join with edging strip), the sleeve having several extending portions ((26A, 26B, 28A, and 8B of Figs. 1 and 2) thereon, each of the extending portions configured to be received in one of the channels of the edging strip. Not disclosed is a relatively thin shell layer disposed around the core layer. Beladakis, however, discloses a landscape edging with a core (15 of Fig. 3) with a relatively thin shell layer (9 of Fig. 3). It would have

Art Unit: 3643

been obvious to one of ordinary skill in the art at the time of the invention to modify the edging system of Lemelson by adding a plastic coating as disclosed by Beladakis so as to provide UV protection (at col. 2 lines 52-64 of Beladakis) so as to have the edging last longer.

As to Claim 6, Lemelson as modified by Beladakis further disclose the core layer with two longitudinal channels (15 and 17 of Fig. 1 of Lemelson) and the connector with to extending portions (see Figs. 1 and 4 of Lemelson).

As to Claim 8, the limitations of Claim 1 are disclosed as described above. Not disclosed are the connector's extending portions having protruding barbs. Examiner takes official notice that it is old and notoriously well known in the connector art to use protruding barbs to make a connection more tight. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by making the connector's extending portions with protruding barbs so as to make the connection more tight.

As to Claim 9, Lemelson as modified by Beladakis further disclose the channels with openings at the first and second ends of the strip (Fig. 1 of Lemelson).

As to Claim 12, Lemelson discloses a landscape edging system (Figs. 1-5) comprising an edging strip (11 of Figs. 1 and 5) having top and bottom surfaces (surfaces of 15 and 17 of Fig. 1) and first and second ends, edging strip having a core (12, 15, and 17 of Fig. 1), the core coextruded (col. 2 lines 1-9); the core layer having two longitudinal channels (15B and 17B of Fig. 1) disposed therein, each of the channels having a channel wall (shown in Fig. 1); and a connector (20 of Figs. 1 and 4) having a channel-shaped sleeve portion (25, 26, 22, 27, 28 of Fig.

Art Unit: 3643

1; sleeve portion is channel shaped in that fits into channels 15B and 17B), with open first and second ends (in that ends around 28B and 26A of Fig. 1 are open) configured to receive the ends of the edging strip (in that they join with edging strip), with an internal body member (22 of Figs. 1 and 4) having several extending portions (26A, 26B, 28A, and 8B of Figs. 1 and 2) thereon, each of the extending portions configured to be received in one of the channels. Not disclosed is a relatively thin shell layer disposed around the core layer and both layers coextruded.

Beladakis, however, discloses a landscape edging with a core (15 of Fig. 3) with a relatively thin shell layer (9 of Fig. 3). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging system of Lemelson by adding a plastic coating as disclosed by Beladakis so as to provide UV protection (at col. 2 lines 52-64 of Beladakis) so as to have the edging last longer and by making by coextrusion so as to make at a low cost (a furtherance of the concept of Lemelson at col. 1 line 29).

As to Claim 17, the limitations of Claim 12 are disclosed as described above. Not disclosed are the connector's extending portions having protruding barbs. Examiner takes official notice that it is old and notoriously well known in the connector art to use protruding barbs to make a connection more tight. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by making the connector's extending portions with protruding barbs so as to make the connection more tight.

Claims 2 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628) in view of Gruber (DE 3039971 A1).

Art Unit: 3643

As to claim 2, the limitations of Claim 1 are disclosed as described above. Not disclosed is the shell layer substantially encapsulating the core layer. Gruber, however, discloses an edging with a shell layer encapsulating a core layer (page 3 lines 16-17 of translation in English of Gruber). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by substantially encapsulating the core with a shell as disclosed by Gruber so as to afford protection for the complete edging system.

As to Claim 21, Lemelson discloses a landscape edging system (Figs. 1-5) comprising an edging strip (11 of Figs. 1 and 5) having top and bottom surfaces (surfaces of 15 and 17 of Fig. 1) and first and second ends, edging strip having a core (12, 15, and 17 of Fig. 1), the core layer having two longitudinal channels (15B and 17B of Fig. 1) disposed therein, each of the channels having a channel wall (shown in Fig. 1); and a connector (20 of Figs. 1 and 4) having a channel shaped sleeve portion (25, 26, 22, 27, 28 of Fig. 1; sleeve portion is channel shaped in that fits into channels 15B and 17B) with an internal body member (22 of Figs. 1 and 4) with open first and second ends (in that ends around 28B and 26A of Fig. 1 are open) configured to receive the ends of the edging strip (in that they join with edging strip), the sleeve having several extending portions ((26A, 26B, 28A, and 8B of Figs. 1 and 2) thereon, each of the extending portions configured to be received in one of the channels of the edging strip. Not disclosed is a relatively thin shell layer substantially encapsulating the core layer. Beladakis, however, discloses a landscape edging with a core (15 of Fig. 3) with a relatively thin shell layer (9 of Fig. 3); Gruber discloses the shell encapsulating the core. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the edging system of Lemelson by adding a plastic

Art Unit: 3643

coating as disclosed by Beladakis so as to provide UV protection (at col. 2 lines 52-64 of Beladakis) so as to have the edging last longer and by making by coextrusion so as to make at a low cost (a furtherance of the concept of Lemelson at col. 1 line 29).

Claims 3-5 and 13-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628) in further view of Walsh et al. (US 4,820,469).

As to Claim 3, the limitations of Claim 1 are disclosed as described above. Not disclosed is the core layer made of regrind plastic. Walsh et al., however, discloses the use of regrind plastic in a core (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by using regrind plastic as the core as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.).

As to Claim 4, the limitations of Claim 1 are disclosed as described above. Not disclosed is the shell layer made of high quality plastic. Walsh et al., however, discloses the use of high quality plastic in a shell (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by using high quality plastic as the shell as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.) that still retains a high performance outer layer.

As to Claim 5, the limitations of Claim 1 are disclosed as described above. Lemelson further discloses coextrusion in an edging (col. 2 lines 1-8). Not disclosed is the core layer being

Art Unit: 3643

regrind plastic and the shell layer being high quality plastic. Walsh et al., however, discloses the use of regrind plastic in a core and high quality plastic in a shell (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by making by coextrusion as disclosed by Lemelson so as to make at a low cost (see Lemelson at col. 1 line 29) and by using regrind plastic as the core and high quality plastic in a shell as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.) that still retains a high performance outer layer.

As to Claim 13, the limitations of Claim 12 are disclosed as described above. Not disclosed is the core layer made of regrind plastic. Walsh et al., however, discloses the use of regrind plastic in a core (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by using regrind plastic as the core as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.).

As to Claim 14, the limitations of Claim 12 are disclosed as described above. Not disclosed is the shell layer made of high quality plastic. Walsh et al., however, discloses the use of high quality plastic in a shell (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by using high quality plastic as the shell as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.) that still retains a high performance outer layer.

Art Unit: 3643

As to Claim 15, the limitations of Claim 12 are disclosed as described above. Not disclosed is the core layer being regrind plastic and the shell layer being high quality plastic. Walsh et al., however, discloses the use of regrind plastic in a core and high quality plastic in a shell (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by making by using regrind plastic as the core and high quality plastic in a shell as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.) that still retains a high performance outer layer.

Claims 7 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628) in further view of Wuster (US 6,389,742 B1).

As to Claim 7, the limitations of Claim 1 are disclosed as described above. Not disclosed is the one or more extending portions being tapered. Wuster, however, discloses a connector with extending portions that are tapered (7 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by having the connector's extending portions being tapered as disclosed by Wuster so as to facilitate the ease of connecting the edging parts.

As to Claim 16, the limitations of Claim 12 are disclosed as described above. Not disclosed is the one or more extending portions being tapered. Wuster, however, discloses a connector with extending portions that are tapered (7 of Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of

Art Unit: 3643

Lemelson as modified by Beladakis by having the connector's extending portions being tapered as disclosed by Wuster so as to facilitate the ease of connecting the edging parts.

Claims 10, 11, and 18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628) in further view of Danna et al. (US 6,108,969).

As to Claim 10, the limitations of Claim 1 are disclosed as described above. Not disclosed is a stake member configured to engage the strip to the ground. Danna et al., however, discloses a stake member (25 of Fig. 6) configured to engage the strip to the ground. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by adding a stake member as disclosed by Danna et al. so as to make the edging more secure in the ground.

As to Claim 11, Lemelson as modified by Beladakis as further modified by Danna et al. further disclose the stake member penetrating the side of the edging strip (Fig. 6 of Danna et al.).

As to Claim 18, the limitations of Claim 12 are disclosed as described above. Not disclosed is a stake member configured to engage the strip to the ground. Danna et al., however, discloses a stake member (25 of Fig. 6) configured to engage the strip to the ground. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis by adding a stake member as disclosed by Danna et al. so as to make the edging more secure in the ground.

Art Unit: 3643

Claim 22 are rejected under 35 U.S.C. §103(a) as being unpatentable over Lemelson (US 3,933,311) in view of Beladakis (US 5,715,628) in further view of Gruber (DE 3039971 A1) and Walsh et al. (US 4,820,469).

As to Claim 22, the limitations of Claim 21 are disclosed as described above. Not disclosed is the core layer made of regrind plastic. Walsh et al., however, discloses the use of regrind plastic in a core (col. 11 lines 52-64). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the edging system of Lemelson as modified by Beladakis and Gruber by using regrind plastic as the core as disclosed by Walsh et al. so as to find a use for reprocessed material (col. 3 lines 39-45 of Walsh et al.).

Response to Arguments

Applicant's arguments filed 17 August 2005 have been fully considered but they are not persuasive. Applicant's arguments are: (1) No motivation to combine Lemelson with Beladakis because adding the thin shell layer of Beladakis would clog the openings of Lemelson so the edging would lose its lattice effect (Remarks page 5, 1st complete para.); (2) Neither Lemelson nor Beladakis are concerned with, discuss or are in any way related to providing an edging strip having an inner core layer substantially encapsulated by a thin shell (Remarks page 6, lines 5-7); (3) The sleeve of Lemelson is not like the sleeve of Applicant because in Lemelson's sleeve neither the internal body member nor the extending portions are internal to the sleeve as are Applicant's (Remarks page 6, lines 20-26); (4) Gruber does not disclose an edging with a coating encapsulating a core layer (Remarks page 8, lines 1-9); (5) Combining Walsh (discloses the use of regrind plastic) with Lemelson, Beladakis, or Gruber is hindsight and Walsh is not an

Art Unit: 3643

edging (Remarks page 9, lines 8-11; page 11, lines 1-5); and, (6) Danna does not disclose a stake going through the side of an edging as shown by Applicant at Fig. 4 in the Specification (Remarks page 10, lines 11-14).

As to argument (1), the difficulty of applying a coating, or shell, to Lemelson is not dispositive. There is motivation to apply a protective coating, or shell, to virtually any edging so as to protect the material from UV light. Coating are known to be on latticed materials.

As to argument (2), Beladakis discloses a coating, or shell.

As to argument (3), Examiner considers the sleeve of Lemelson to be similar in structure of Applicant's sleeve as shown in Fig. 3 of the Specification. Hence, the claimed elements are similar.

As to argument (4), at the middle of page 3 of the translation of Gruber it is stated that "[i]n an alternative embodiment, however, the metal can also be used, especially one that has been coated with plastic." On its face, this language states the metal is completely coated.

As to argument (5), Walsh is concerned the methods of "producing various materials and products" (see abstract). An edging would be an obvious product to make of plastic. Using regrind is obvious because of the motivation to recycle any and all materials.

As to argument (6), Examiner considers the stake position of Danna in Figure 6 to be similarly positioned as Applicant's stake in Fig. 4 of the Specification.

Conclusion

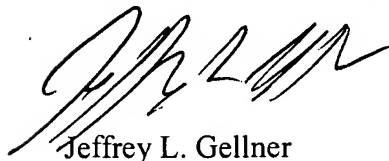
THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3643

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey L. Gellner

Primary Examiner

Art Unit 3643